

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN ROBERT SMITH,

Plaintiff,

Case No. 1:23-cv-579

v.

Honorable Ray Kent

JEREMY BUSH et al.,

Defendants.

ORDER LIFTING STAY AND FOR SERVICE

This is a prisoner civil rights action. In an opinion and judgment (ECF Nos. 5 and 6) entered on June 28, 2023, the Court dismissed Plaintiff's complaint for failure to state a claim under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A(b) and 42 U.S.C. § 1997e(c). Plaintiff subsequently appealed. (ECF No. 7.) In an order and judgment (ECF Nos. 11 and 12) entered on January 19, 2024, the United States Court of Appeals for the Sixth Circuit vacated this Court's judgment and remanded the case for further proceedings after concluding that Plaintiff had adequately set forth an Eighth Amendment claim. The Sixth Circuit's mandate was issued on February 12, 2024. (ECF No. 14.)

In an opinion and order (ECF Nos. 15 and 16) entered on April 2, 2024, the Court rescreened Plaintiff's complaint pursuant to the PLRA. In that opinion and order, the Court dismissed Plaintiff's complaint against Defendant Rewerts for failure to state a claim and noted that Plaintiff could proceed upon his Eighth Amendment claim against Defendant Bush. In a separate order (ECF No. 17) entered that same day, the Court referred the case to *Pro Se* Prisoner Civil Rights Litigation Early Mediation Program and stayed the case for any purpose other than

mediation. Early mediation was conducted on October 28, 2024, but the case did not settle. (ECF No. 21.) Accordingly,

IT IS ORDERED that the stay of this proceeding that was entered to facilitate the mediation is **LIFTED**.

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall again commence collection of the filing fee as outlined in the Court's prior order granting Plaintiff leave to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that the 90-day period for service set forth in Federal Rule of Civil Procedure 4(m) shall run, starting with the date of this order.

IT IS FURTHER ORDERED that the Clerk shall forward the complaint to the U.S. Marshals Service, which is authorized to mail a request for waiver of service to Defendant Bush in the manner prescribed by Fed. R. Civ. P. 4(d)(2). If waiver of service is unsuccessful, summons shall issue and be forwarded to the U.S. Marshals Service for service under 28 U.S.C. § 1915(d).

IT IS FURTHER ORDERED that Defendant Bush shall file an appearance of counsel (individual Defendants may appear *pro se* if they do not have counsel) within 21 days of service or, in the case of a waiver of service, 60 days after the waiver of service was sent. Until so ordered by the Court, Defendant Bush is not required to file an answer or motion in response to the complaint, and no default will be entered for failure to do so. See 42 U.S.C. § 1997e(g)(1). After Defendant Bush has filed an appearance, the Court will enter a case management order to govern further proceedings in this case.

Dated: October 29, 2024

/s/ Ray Kent
Ray Kent
United States Magistrate Judge